

**DEPARTMENT OF HUMAN SERVICES  
INTER-OFFICE COMMUNICATION**

**TO:** Gwendolyn L. Harris  
Commissioner

**FROM:** Kathryn A. Plant, Acting Director  
Division of Medical Assistance and Health Services

**DATE:** July 29, 2002

**SUBJECT:** NJ Register Proposal 02-P-34  
Fair Hearings for Managed Care

The Division of Medical Assistance and Health Services is proposing changes to N.J.A.C. 10:74. These changes reflect the addition of a paragraph in N.J.A.C. 10:74-11.2 whereby the contractor shall provide written analysis, representation and expert witness services in Fair Hearings and in court regarding any actions the contractor has taken.

Please sign the proposal and forward the document to the Office of Administrative Law on or before September 9, 2002, for publication in the October 7, 2002, issue of the New Jersey Register.

KAP:LI

Attachments

c: John Walzer  
Distribution

**HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

Managed Health Care Services for Medicaid and NJ FamilyCare Beneficiaries

Fair Hearings for Managed Care

**Proposed Amendments:** N.J.A.C. 10:74-11.2.

**Authorized:** by Gwendolyn L. Harris, Commissioner,  
Department of Human Services.

**Authority:** N.J.S.A. 30:4D-1 et seq., specifically 7 and 12.  
Federal Social Security Act Section 1902(a), 42 CFR  
431 and 438.408(j)(2).

**Calendar Reference:** See Summary below for explanation of the exception  
to the rulemaking calendar requirements of N.J.A.C.  
1:30-3.3(a)5.

**Agency Control Number:** 02-P-34.

**Proposal Number:** PRN 2002 - .

**Submit comments by** **to:**

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The agency proposal follows:

## **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

In accordance with Section 1902(a)3 of the Federal Social Security Act, as well as, 42 CFR 431 and 438.408(j)(2), the Division of Medical Assistance and Health Services (Division) is proposing regulatory amendments requiring the managed care organization (MCO) to provide written analysis, representation, and expert witness services in Fair Hearings and in court regarding any actions the MCO has taken. Additionally, in the case of a MCO's denial, modification, or deferral of a prior authorization request, the MCO shall present its position for the denial, modification, or deferral of procedures during Fair Hearing proceedings.

## **Social Impact**

There will be a favorable social impact on beneficiaries, providers, and the general public. The outcome of any Fair Hearing or court requirement should be accomplished expeditiously, as the MCO will provide expert witness and representation during such proceedings.

### **Economic Impact**

There should be a favorable economic impact on beneficiaries and the general public, as expert witnesses and representation shall be available to expeditiously resolve matters.

During the period from July 1, 2000- June 30, 2001, only three cases went to the Office of Administrative Law for a fair hearing. In this regard, the costs have been very minimal as there are no filing fees for OAL cases and OAL is already budgeted by the State.

Additionally, providers and beneficiaries do not pay for the cost of court.

### **Federal Standards Statement**

Section 1902(a)3 of the Federal Social Security Act provides an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon within reasonable promptness.

Under 42 CFR 438.408(j)2, the parties to the State fair hearing include the MCO as well as the enrollee, and his or her representative or representative of a deceased enrollee's estate.

The Division has reviewed the Federal statutory and regulatory requirements and has determined that the proposed amendments comply with and do not exceed Federal standards.

### **Jobs Impact**

The proposed amendment is not expected to either increase or decrease the number of jobs available within the State of New Jersey.

### **Agriculture Industry Impact**

This rule is not expected to impact on the agriculture industry.

### **Regulatory Flexibility Statement**

The proposed amendments affect those Managed Care Organizations that provide services to beneficiaries. These providers are not considered small businesses as the term is defined because they employ more than 100 employees. Accordingly, no Regulatory Flexibility Analysis is required.

### **Smart Growth Impact**

The Department anticipates that the proposed rulemaking will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:74-11.2 Fair Hearing

(a)-(b)(No change.)

**(c) The MCO shall provide written analysis, representation and expert witness services in Fair Hearings and in any subsequent hearings in any other court regarding any actions the MCO has taken regarding a beneficiary. In the case of a MCO's denial, modification, or deferral of a prior authorization request, the MCO shall present its position for the denial, modification, or deferral of procedures during Fair Hearing proceedings.**

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**Gwendolyn L. Harris, Commissioner**  
**Department of Human Services**

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**Date**